

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**OHIO VALLEY ENVIRONMENTAL
COALITION, INC., WEST VIRGINIA
HIGHLANDS CONSERVANCY, INC., and
THE SIERRA CLUB,**

Plaintiffs,

v.

Civil Action No. 3:09-cv-1167

HOBET MINING, LLC,

Defendant.

**OHIO VALLEY ENVIRONMENTAL
COALITION, INC., WEST VIRGINIA
HIGHLANDS CONSERVANCY, INC.,
and SIERRA CLUB,**

Plaintiffs,

v.

**Civil Action No. 3:11-cv-0115
Judge Robert C. Chambers**

PATRIOT COAL CORPORATION, et al.,

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANTS' EXPLANATION OF
REORGANIZATION PLAN**

On October 14, 2015, Defendants in the above referenced actions submitted a "Response to Order" explaining their position on the effect of the approved reorganization plan in Defendants' bankruptcy proceedings on their obligations in these actions. The Effective Date of the Plan of Reorganization occurred on October 26, 2015, and the automatic stay is no longer in effect. Moreover, for the reasons set forth below, the discharge injunction does not apply to the

claims subject to this proceeding. Accordingly, Plaintiffs now respectfully submit this Response to Defendants' filing to clarify three issues.

First, Plaintiffs note that the Confirmation Order expressly preserves Defendants' obligations in these cases. It provides that "nothing in the Plan, the Plan Supplement, any document relating to the Plan (including, but not limited to, the Blackhawk Transaction Documents, the VCLF Transaction Documents and the Liquidating Trust Agreement) or this Confirmation Order or any other order relating to the Blackhawk or VCLF Transactions, or to the Liquidating Trust Agreement . . . with respect to any Entity other than VCLF or Blackhawk: releases, discharges, exculpates, precludes, or enjoins the enforcement of . . . the obligations in the Specified Orders and Agreements" Confirmation Order at ¶ 154 (Exhibit 1 to Defendants' Response to Order). Under the Confirmation Order, "Specified Orders and Agreements" includes the Modified Consent Decree in Civil Action No. 3:11-cv-115 and the operative orders in Civil Action No. 3:09-cv-1167. *Id.* at 60 n. 9. Moreover, the Reorganization Plan provides that the term "'Entity' shall have the meaning set forth in section 101(15) of the Bankruptcy Code, which, in turn, defines "entity" to include "persons"—which are defined to include business organizations such as Defendants. 11 U.S.C. §§ 101(9), 101(15), & 101(41). Accordingly, nothing in the Reorganization Plan affects Defendants' obligations in these cases.

Second, in Paragraph 10 of Defendants' filing, Defendants quote some excerpts of the Confirmation Order, but, from Plaintiffs' perspective, omit a crucial point. It is important to note that the quoted section of the "carve-out" provision of the Confirmation Order preserves not only obligations in these cases assumed by the Virginia Conservation Legacy Fund, but also by Blackhawk Mining, LLC. *See* Confirmation Order at ¶ 154 (Exhibit 1 to Defendants' Response

to Order) (preserving “any obligations under the Specified Orders and Agreements expressly assumed by Blackhawk pursuant to the Blackhawk Transaction Documents . . .”).

Third, in Paragraph 12 of their Response to Order, Defendants’ assert that they “intend[] to move jointly with the Plaintiffs to substitute VCLF for Patriot as parties in Civil Action No. 3:09-cv-1167 and Civil Action No. 3:11-0115.” Plaintiffs believe that Blackhawk Mining, LLC, will also have to be made a party to Civil Action No. 3:11-cv-115 based on the obligations that they assumed under the Modified Consent Decree in that action. Plaintiffs further note that they expect to work with Defendants to add the necessary parties, but reserve their right to object to a full “substitution” of the parties based on (1) Defendants’ preserved obligations under the Confirmation Plan and (2) the Peabody Guaranty in Civil Action No. 3:09-cv-1167.

Respectfully submitted,

/s/ Derek O. Teaney

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CERTIFICATE OF SERVICE

I, Derek O. Teaney, do hereby certify that, on November 3, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following ECF participants:

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Respectfully submitted,

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